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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/752,210	12/29/2000	Fred S. Cook	1406	9093	
28004	7590	05/05/2005	EXAMINER		
SPRINT				KANG, PAUL H	
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OVERLAND PARK, KS 66251-2100				PAPER NUMBER	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/752,210	COOK, FRED S.
	Examiner	Art Unit
	Paul H. Kang	2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 December 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 22 March 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-11, 13-17, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agrapharam et al., US Pat. No 6,240,462 B1, in view of McAlinden, US Pat. No. 5,946,633.

2. As to claims 1 and 13, Agrapharam teaches the invention substantially as claimed. Agrapharam teaches a bandwidth boost system for use in a communication device and a method of operating a bandwidth boost system, comprising:

a control system configured to receive a transmit request for a first data set and a second data set, process the transmit request to generate first transmit instructions and a second data set, process the transmit request to generate first transmit instructions and second transmit instructions, and transfer the first data set, the second data set, the first transmit instructions and the second transmit instructions (data requests are generated by the user and transmitted to a POP server which processes the incoming requests, determines whether a secondary connection in serving the user based on QoS criteria; Agrapharam, col. 1, line 66 – col. 2, line 51 and col. 6, line 59 – col. 7, line 32);

a wireline transfer system configured to receive the transmit request from a client over a wireline communication path, transfer the transmit request to the control system, receive the first data set and the first transmit instructions from the control system, and transmit the first data set to the client over the wireline communication path based on the first transmit instructions (conventional SLIP connection is used to serve a user request; Agrapharam, col. 1, line 66 – col. 2, line 51); and

a second system configured to receive the second data set and the second transmit instructions from the control system, establish a second communication path with the client based on the second transmit instructions, and transmit the second data set to the client over the second communication path based on the second transmit instructions (a secondary connection is established from the user over an ISDN connection; Agrapharam, col. 1, line 66 – col. 2, line 51 and col. 5, line 60 – col. 6, line 5 and col. 6, line 59 – col. 7, line 32).

However, Agrapharam does not explicitly teach that the second system establishes a wireless connection. In the same field of endeavor, McAlinden teaches a system for increasing system bandwidth by establishing additional wireless connections as bandwidth is required (McAlinden, col. 2, lines 20-35).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the wireless connection of McAlinden into the bandwidth improvement system Agrapharam for the purpose of using a transmission medium widely accessible and available to end users.

3. As to claims 2 and 14, Agraharam-McAlinden teach the system and method further comprising transmitting the first data set to the client over the wireline communication path and transmitting the second data set to the client over the wireless communication path concurrently (Agraharam, col. 1, line 66 – col. 2, line 51; col. 5, line 60 – col. 6, line 5 and col. 6, line 59 – col. 7, line 32).

4. As to claims 3 and 15, Agraharam-McAlinden teach the system and method wherein processing the transmit request to generate the first transmit instructions and the second transmit instructions comprises processing the transmit request to select the wireless communication path for transmission of the second data set to the client based on quality of service (Agraharam, col. 1, line 66 – col. 2, line 51; col. 5, line 60 – col. 6, line 5 and col. 6, line 59 – col. 7, line 32).

5. As to claims 4 and 16, Agraharam-McAlinden teach the system and method wherein processing the transmit request to generate the first transmit instructions and the second transmit instructions comprises processing the transmit request to select the wireless communication path for transmission of the second data set to the client based on the size of the second data set (Agraharam, col. 1, line 66 – col. 3, line 9).

6. As to claims 5 and 17, Agraharam-McAlinden teach the system and method comprising generating a data request for the first data set and the second data set in response to receiving the transmit request, transmitting the data request to a network, and receiving the first data set and the second data set from the network in response to the data request (Agraharam, col. 1, line 66 –

col. 2, line 51; col. 5, line 60 – col. 6, line 5 and col. 6, line 59 – col. 7, line 32).

7. As to claims 9 and 21, Agraharam-McAlinden teach the system and method comprising storing configuration information for the client and processing the configuration information to generate the second transmit instructions (Agraharam, col. 1, line 66 – col. 2, line 51; col. 5, line 60 – col. 6, line 5 and col. 6, line 59 – col. 7, line 32).

8. As to claims 10 and 22, Agraharam-McAlinden teach the system and method wherein establishing the wireless communication path comprises communicating with a Mobile Telephone Switching Office (MCO; McAlinden, col. 2, lines 20-35).

9. As to claims 11 and 23, Agraharam-McAlinden teach the system and method wherein establishing the wireless communication path comprises communicating with a cell site (McAlinden, col. 2, lines 20-35).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6, 7, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agraharam-McAlinden as applied, further in view of Sass et al., US Pat. No.6,769,028 B1.

As to claims 6, 7, 18 and 19, Agraharam-McAlinden teach the invention substantially as claimed. However, Agraharam-McAlinden does not explicitly teach the system and method wherein the second data set comprises a streaming video and Internet radio feed. In the same field of endeavor, Sass teaches a system for transmitting streaming video and internet radio content (Sass, col. 6, line 58 – col. 7, line 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the multimedia content as taught by Sass into the system of Agraharam-McAlinden for the purpose of efficiently serving highly demanded/high bandwidth requiring data.

12. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agraharam-McAlinden as applied, further in view of Alloune et al., US Pat. No.6,615,034 B1.

As to claims 8 and 20, Agraharam-McAlinden teach the invention substantially as claimed. However, Agraharam-McAlinden does not explicitly teach the system and method comprising generating billing records based on transmissions over the wireline communication path and the wireless communication path. In the same field of endeavor, Alloune teaches generating a billing record from both a wireline and wireless communication media (Alloune, col. 2, lines 16-67).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the billing system of Alloune for the purpose of

integrating separate billing systems.

13. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agraharam-McAlinden as applied, further in view of Fong et al., US Pat. No.6,657,982 B1.

As to claims 12 and 24, Agraharam-McAlinden teach the invention substantially as claimed. However, Agraharam-McAlinden does not explicitly teach the system and method wherein establishing the wireless communicating path comprises communicating with a Multichannel Multipoint Distribution Service (MMDS) system. In the same field of endeavor, Fong teaches a system and method using MMDS in providing a high speed cellular communication system (col. 1, line 10 – col. 2, line 24).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the widely known and implemented MMDS as taught by Fong into the system of Agraharam-McAlinden for the purpose of implementing a high speed cellular communication system.

#### *Response to Arguments*

Applicant's arguments filed December 15, 2004 have been fully considered but they are not persuasive. The applicant argues in substance that the prior art of record fails to teach "a bandwidth boost between an end user client and a communication device, such as a ISP." See Applicant Remarks of December 15, 2004 (page 9) (emphasis original). Applicant further argues that the Agraharam patent teaches away from the invention as claimed because Agraharma does

not aim to solve bandwidth problems for the “last mile” but instead between a terminal server and an application server.

The examiner respectfully disagrees with applicant’s arguments. In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., “the last mile”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The definiteness of the language employed must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Insofar, the claims have been given the broadest reasonable interpretation consistent with the specification and the prior art, since the applicant may then amend his claims, the thought being to reduce the possibility that after a patent is granted the claims may be interpreted as giving broader coverage than is justified. Therefore, applicant’s arguments regarding “the last mile” are not given weight as to the patentability of the claimed subject matter. The invention as claimed, specifically in the impendent claims argued by the applicant, do not require “a bandwidth boost between an end user client and a communications device, such as an ISP,” the “last mile,” and preclude bandwidth boost between servers on the network.

In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., “the last mile”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H Kang whose telephone number is (703) 308-6123. After October 26, 2004, all calls should be placed to (571) 272-3882. The examiner can normally be reached on 9 hour flex. First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL H. KANG  
PRIMARY PATENT EXAMINER